

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA**

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JACOB DOE

Plaintiff,

-against-

1:23-cv-41-MOC-WCM

**THE UNIVERSITY OF NORTH CAROLINA
SYSTEM, et al.**

Defendants.

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NOTICE OF SCHEDULE CONFLICT

Undersigned counsel for the Plaintiff, Robert Ekstrand, Esq., is the member of this Bar with whom Plaintiff's out of state counsel, Nesenoff & Miltenberg, LLP, has associated as local counsel in the above-captioned action. Mr. Ekstrand is serving in the same capacity for the same out of state counsel in an action in the Middle District of North Carolina, *Doe v. Wake Forest University*, 1:23-cv-114-KDB-JLW.¹

Counsel for the plaintiff seeks the court's resolution of a conflict in the scheduling of hearings that Mr. Ekstrand is required to attend pursuant to MDND LR83.1 and WDNC LCvR 83.1. In support of this request, undersigned counsel shows the court the following:

1. In both cases, the plaintiff's motions for a temporary restraining order have

¹ The Honorable Kenneth D. Bell, United States District Judge for the Western District of North Carolina, has been designated to preside over the Middle District case by designation of the Honorable Roger L. Gregory, Chief Judge of the United States Court of Appeals for the Fourth Circuit, pursuant to 28 U.S.C. § 292(b).

been scheduled to be heard in the morning of February 17, 2023, one in Asheville, North Carolina and the other in Charlotte, North Carolina. Specifically:

a. **In MDNC No. 1:23-cv-114**, the motion will be heard in Charlotte, North Carolina beginning at 10:30 a.m. Order entered at February 14, 2023, Status Conference. Counsel for the Defendant has advised the court that Defendant expects to oppose the relief the plaintiff seeks in the motion.

b. **In WDNC No. 1:23-cv-41**, the hearing will be held by District Judge Max O. Cogburn, Jr., in Asheville, North Carolina, beginning at 9:15 a.m. Defendants' counsel has not indicated whether Defendant will oppose the limited temporary relief sought in the motion. See, Text Order dated February 15, 2023

2. Mr. Ekstrand is required to be present at both hearings by the Local Rules of this Court and the Local Rules of the Middle District of North Carolina. *See*, WDNC LCvR 83.1(b) (attorneys admitted *pro hac vice* “must associate local counsel and be accompanied by local counsel at all hearings unless otherwise permitted by the Court”); *see also*, MDNC LR83.1 (“a member of the bar of this Court who accepts employment in association with a specially appearing attorney is responsible to this Court for the conduct of the litigation or proceeding and . . . must be present during pretrial conferences, potentially dispositive proceedings, and trial”).

3. The relief sought in both motions is crucial to avoiding grave, immediate and

irreparable harm to the plaintiff in each case.

4. A similar Notice is being filed contemporaneously in *Doe v. Wake Forest University*, MDNC No. 1:23-cv-114.

THEREFORE, undersigned counsel for the plaintiff respectfully requests that the location and/or time of the scheduled hearings be adjusted to permit Mr. Ekstrand to appear at both proceedings or otherwise comply with the local rules.

Respectfully submitted this 16th day of February 2023.

Counsel for Plaintiff Jacob Doe

Nesenoff & Miltenberg, LLP

/s/ Andrew T. Miltenberg.

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-and-

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CERTIFICATE OF SERVICE

I hereby certify that at approximately 11:55 a.m. on February 16, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. I further certify that I will serve an electronic copy of same via electronic mail to General Counsel for the University and that paper copies of the foregoing will be served with Plaintiff's Rule 4 service of the complaint and summons on all Defendants.

/s/ Robert C. Ekstrand.
Robert C. Ekstrand